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Attorneys for Plaintiffs, TOMAS BARRERA, SR., individually and as a Personal Representative of THE ESTATE OF TOMAS BARRERA, JR.

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

MARIA LAZOS, et al,

Plaintiff,

vs.

CITY OF OXNARD, et al,

Defendants.

TOMAS BARRERA, SR.

Plaintiff,

vs.

CITY OF OXNARD, et al,

Defendants.

Case No. CV 08-02987 RGK (SHx)

PLAINTIFFS' MOTION IN LIMINE  
NO. 1 TO EXCLUDE CRIMINAL  
BACKGROUND OF DECEDENT

Date: August 11, 2009

Time: 9:00 a.m.

Courtroom: 850

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

Plaintiffs, MARIA LAZOS and TOMAS BARRERA, SR., individually and as representatives of the ESTATE OF TOMAS BARRERA, hereby move this Court for an order excluding any and all evidence, testimony, references to testimony/evidence or argument, relating to decedent's criminal background.

This motion is made under Fed. R. Ev. 401, 402, 403 and 609, and is based upon the ground that the evidence is irrelevant and that its probative value is

1 substantially outweighed by the danger of undue prejudice to Plaintiffs.

2 This motion is further based on the attached Memorandum of Points and  
3 Authorities, the pleadings and papers on file in this action and upon such of argument  
4 and evidence as may be presented prior to or at the hearing of this motion.

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6 Dated: June 23, 2009

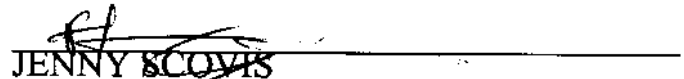
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GREGORY A. YATES  
Co-Counsel for Plaintiffs,  
TOMAS BARRERA, SR., individually and as a  
Personal Representative of THE ESTATE OF  
TOMAS BARRERA, JR.

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11 Dated: June 26, 2009

LAW OFFICES OF KIM SCOVIS

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JENNY SCOVIS  
Counsel for Plaintiff,  
MARIA LAZOS, individually and as a Personal  
Representative of THE ESTATE OF TOMAS  
BARRERA, JR.

1                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2                   **I.**

3                   **THE COURT SHOULD EXCLUDE ANY EVIDENCE OF DECEDENT'S**  
4                   **CRIMINAL BACKGROUND AS BEING IRRELEVANT AND HIGHLY**  
5                   **PREJUDICIAL**

6                   The fact that decedent had a criminal record will prove or disprove no issue in  
7                   this action, and has no probative value. Therefore, such evidence should be excluded.

8                   The only relevant issue in this case is whether officer Salinas reasonably  
9                   believed that decedent posed a threat of death or serious injury. At the time he  
10                  pursued decedent, Salinas was not aware of decedent's identity and his criminal  
11                  background. Thus, decedent's criminal history did not factor into Salina's decision  
12                  to shoot, and, therefore, it has absolutely no relevance to the issues in this case. Since  
13                  Salinas' state of mind is what relevant to determining the reasonableness of his  
14                  conduct, decedent's criminal background, which was unknown to Salinas at the time  
15                  he shot decedent, is irrelevant and has no probative value to this case.

16                 While admitting such evidence has no probative value, it would be highly  
17                 prejudicial to Plaintiffs, as it would depict decedent as a criminal and will arouse the  
18                 jury's prejudice, hostility and antipathy. *See United States v. Bejar-Matrecois*, 618  
19                 F.2d 81, 84 (9<sup>th</sup> Cir.1980) (trial court erred by admitting evidence of a prior  
20                 conviction of the defendant, because to the extent that the evidence was relevant, it  
21                 was outweighed by its unfairly prejudicial and cumulative nature.) If decedent is  
22                 depicted as having criminal background, the jury might tend to make their  
23                 determination on an improper basis, and conclude that officer Salinas was reasonable  
24                 in shooting decedent only because he had a criminal record. Allowing the evidence  
25                 will prolong this trial and waste the valuable time and resources of the Court and all  
26                 other participants, while adding absolutely nothing significant or valuable to the  
27                 evidence.

28                 ///

1 While Fed. R. Ev. 609 provides the general rule that evidence of felony  
2 convictions may be used to attack witness credibility, this is inapplicable to our case,  
3 since, clearly, decedent will not be a witness in this case. The cardinal issue in this  
4 case will depend on Salinas' and not decedent's credibility.

5 **II.**

6 **CONCLUSION**

7 Based on the above, it is respectfully requested that the Court exclude any and  
8 all evidence, testimony, references to testimony/evidence or argument, relating to  
9 decedent's criminal background.

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11  
12 Dated: June 23 2009

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17 Dated: June 26 2009

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